THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION NO.10255 OF 2005

Dated 22nd September, 2005.

Between:

R. Krishnan … Petitioner

And

1. The Special Officer, Chittoor Cooperative Town Bank Limited, No.59, Chittoor.
2. The Deputy General Manager, Reserve Bank of India, Saifabad, Hyderabad.

… Respondents

THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION NO.10255 OF 2005

ORDER :

When the vacate petition filed by the second respondent is listed for hearing, with the consent of the learned Counsel for both parties, the main writ petition itself is heard and decided by the following order.

This writ petition is filed seeking a declaration that the alleged action of the first respondent in not adjusting the FDR amount in the credit of petitioner's loan account is arbitrary and illegal.

The facts, which are not in dispute, are as under :

The writ petitioner has availed a loan of Rs.1,25,000/- from the first respondent Bank on 3-12-2001. It appears that though he has repaid the substantial amount, still a sum of Rs.55,244/- together with interest thereon is due. Since the petitioner failed to repay the said amount, the loan account of the petitioner was classified as 'Non-performing Asset Account' and it appears that the first respondent Bank has already initiated proceedings under Section 71 of the A.P. Co-operative Societies Act, 1964 (for short, 'the Act') for recovery of the said amount and the proceedings are pending.

In the writ petition, though the petitioner does not deny his liability to the extent of 55,244/-, it is claimed that the sister-in-law of the petitioner was having FDR to the tune of Rs.1 lakh in the first respondent Bank and she had also given her written consent to adjust the said FDR amount to the credit of the loan account of the petitioner. It is also pleaded that the petitioner made a representation requesting the first respondent Bank to clear the arrears under his loan account by adjusting the amount from the Fixed Deposit of her sister-in-law. It is alleged that without considering the said representation, the first respondent Bank was proceeding to recover the said amount. Hence, this writ petition.

The learned Counsel for the petitioner has relied upon a Circular dated 10-1-2005 issued by the second respondent – Reserve Bank of India which runs as under :

> *Directions under Section 35A of the Banking Regulation Act, 1949 (As applicable to Co-operative Societies) – The Chittoor Co-operative Town Bank Ltd., Chittoor, Andhra Pradesh.*

Whereas the Reserve Bank of India had issued certain Directions to the Chittoor Co-operative Town Bank Ltd., Chittoor, through Directive UBD.No.WBS.BSD.IV/D-118/12.03.0190/2004-2005 dated October 07, 2004 which were effective from the close of business on October 11, 2004.

2. And, whereas the Reserve Bank of India is satisfied that in the public interest, it is necessary to modify the directions.

3. Accordingly, Reserve Bank of India, in exercise of the powers vested in it under sub-section (1) and (2) of Section 35A of the Banking Regulation Act, 1949 (As Applicable to Co-operative Societies) read with Section 56 of the Act, hereby directs that sub para (i) of the aforesaid directive be modified to read as under with effect from January 15, 2004 until further orders.

A sum not exceeding Rs.5,000.00 (Rs. Five thousand only) in any deposit account by whatever name called, may be allowed to be withdrawn by a depositor provided that wherever such depositor is having liability to the bank in any manner, i.e. either as a borrower or surety, the amount may be adjusted first to the relevant borrowal account/s.

4. All other terms and conditions of the aforesaid Directive dated October 07, 2004 shall remain unchanged.

A reading of the said Circular makes it clear that such adjustment is permissible only where the deposit stands in the name of loanee himself.

In the counter-affidavit filed on behalf of the respondents 1 and 2, it has also been categorically stated that the petitioner has never made any representation requesting for adjustment of fixed deposit amount said to have been standing in the name of his sister-in-law. In the facts and circumstances of the case and having regard to the language of Circular dated 10-1-2005, I am not inclined to issue a Writ of Mandamus as prayed for.

However, this shall not preclude the petitioner to make an appropriate representation before the 1st respondent Bank, in which event the respondents may consider the same in accordance with law.

Accordingly, the Writ Petition is disposed of. No costs.

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22nd September, 2005.

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